



PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Mark D. FABRY et al.) Group Art Unit: 3661
Application No.: 10/777,140) Examiner: Cuong H. Nguyen
Filed: February 13, 2004) Confirmation No.: 3795
For: POWER MANAGEMENT)
SYSTEM)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In conjunction with a Notice of Appeal under 37 C.F.R. § 41.31, appeal fee payment, and completed form PTO/SB/33 filed concurrently herewith, Applicants respectfully request a pre-appeal brief review of this application in response to the final Office Action of February 27, 2007.

I. Section 103(a) Claim Rejection Based on Koga and Fiaschetti

In the final Office Action, claims 1, 4, and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,670,830 to Koga et al. ("Koga") in combination with U.S. Patent No. 5,901,684 to Fiaschetti et al. ("Fiaschetti"). Claim 1 is the only independent claim rejected under § 103(a) based on the final Office Action's proposed, hypothetical combination of the Koga and Fiaschetti references, and Applicants respectfully traverse the rejection of independent claim 1 because the

Examiner has failed to establish a *prima facie* case of obviousness. Applicants respectfully submit that Koga and Fiaschetti, regardless of whether they are viewed individually or as a whole, fail to disclose or suggest all of the subject matter recited in Applicants' independent claim 1.

Applicants' independent claim 1 is directed to a power management system for a machine, including, among other recitations, "a power source configured to receive a fuel supply based on a fuel curve associated with the machine; . . . and a control system . . . , wherein the control system is operative to modify at least a portion of the fuel curve to reduce the fuel supply when a load condition of the power source exceeds a desired amount." Neither the Koga reference nor the Fiaschetti reference discloses or suggests "a control system . . . , wherein the control system is operative to modify at least a portion of [a] fuel curve to reduce the fuel supply when a load condition of [a] power source exceeds a desired amount." See Request for Reconsideration filed December 5, 2006 ("Request"), at 4-9. For at least this reason, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection of independent claim 1 based on the Examiner's proposed, hypothetical combination of the Koga and Fiaschetti references.

II. Section 103(a) Claim Rejection Based on Koga, Fiaschetti, and Rini

In the final Office Action, claims 2, 3, 9, 13, 15, and 17 were rejected under 35 U.S.C. § 103(a) based on Koga in combination with Fiaschetti and U.S. Patent No. 5,121,324 to Rini et al. ("Rini"). Claims 2 and 3 are the only independent claims rejected under § 103(a) based on the final Office Action's hypothetical combination of the Koga, Fiaschetti, and Rini references, and Applicants respectfully traverse the

rejection of independent claims 2 and 3 because the Examiner has failed to establish a *prima facie* case of obviousness. Applicants respectfully submit that the Koga, Fiaschetti, and Rini references, regardless of whether they are viewed individually or as a whole, fail to disclose or suggest all of the subject matter recited in either independent claim 2 or independent claim 3.

Applicants' independent claim 2 is directed to a power management system for a machine, including, among other recitations, "a power source configured to receive a fuel supply based on a fuel supply limit associated with the machine; . . . and a control system in communication with the power source and the transmission, the control system being configured to modify the fuel supply limit to reduce the fuel supply, the fuel supply limit being regulated based on rack position and a load condition of the power source exceeding a desired amount." The Koga, Fiaschetti, and Rini references, regardless of whether they are viewed individually or as a whole, fail to disclose or suggest "a control system . . . configured to modify [a] fuel supply limit to reduce the fuel supply, the fuel supply limit being regulated based on rack position and a load condition of [a] power source exceeding a desired amount." See Request at 11-13. For at least this reason, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection of independent claim 2 based on the Examiner's proposed, hypothetical combination of the Koga, Fiaschetti, and Rini references.

Applicants' independent claim 3 is directed to a method for operating a power management system, including, among other recitations, "modifying [a] fuel supply limit to reduce the fuel supply being supplied to [a] power source based on rack position and a load condition of the power source exceeding a desired amount." The Koga,

Fiaschetti, and Rini references, regardless of whether they are viewed individually or as whole, fail to disclose or suggest “modifying [a] fuel supply limit to reduce the fuel supply being supplied to [a] power source based on rack position and a load condition of the power source exceeding a desired amount.” Further, when viewed as a whole, the Examiner’s proposed, hypothetical combination of the Koga, Fiaschetti, and Rini references does not render the above-outlined subject matter obvious. See Request at 14. For at least these reasons, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection of independent claim 3 based on the Examiner’s proposed, hypothetical combination of the Koga, Fiaschetti, and Rini references.

III. Section 103(a) Rejections of Dependent Claims 5-7, 10-12, 14, and 16

In the final Office Action, dependent claims 5-7, 10-12, 14, and 16 were rejected under 35 U.S.C. § 103(a) based on Koga and Fiaschetti in combination with one or more of the following: U.S. Pat. App. Pub. No. US 2002/0133279 to Manring; Rini; and U.S. Patent No. 4,885,690 to Schimmel et al. Those dependent claims should be allowable for at least the same reasons their corresponding independent claim is allowable. See Request at 15.

IV. Conclusion

As outlined above, independent claims 1-3 should be allowable. Dependent claims 4-17 each depend from one of allowable independent claims 1-3. Therefore, each of those dependent claims should be allowable for at least the same reasons their

corresponding independent claim is allowable, as well as by virtue of their recitations of additional novel and non-obvious subject matter.

Applicants respectfully request reconsideration of this application, withdrawal of the outstanding claim rejections, and allowance of claims 1-17.

Applicants respectfully submit that the final Office Action contains a number of assertions concerning the related art and the claims. Regardless of whether those assertions are addressed specifically herein, Applicants respectfully decline to necessarily subscribe to them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 6-0916.

Respectfully submitted,

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Dated: May 29, 2007

By: 

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